

Bureau of Indian Affairs, Interior

§ 170.611

resulting from unforeseen circumstances of the construction process (*i.e.*, cost overruns). If the Secretary is unable to fund the unforeseen costs in a cost reimbursable contract, the tribe may suspend performance of the contract until sufficient additional funds are awarded. (See 25 CFR 900.130(e).)

MISCELLANEOUS PROVISIONS

§ 170.605 When may BIA use force account methods in the IRR Program?

BIA may use force account methods in the IRR Program unless the tribe elects otherwise to enter into a self-determination contract or a self-governance agreement for the IRR Program. However, BIA must continue to consult with the tribe before using a force account under this situation. The applicable FAR and Federal law apply to BIA force account project activities.

§ 170.606 How do legislation and procurement requirements affect the IRR Program?

Other legislation and procurement requirements apply to the IRR Program as shown in the following table.

Legislation, regulation or other requirement	Applies to tribes under self-determination contracts	Applies to tribes under self-governance agreements	Applies to activities performed by the Secretary
Buy Indian Act	No	No	Yes.
Buy American Act	No	No	Yes.
Federal Acquisition Regulation (FAR)	No ¹	No	Yes.
Federal Tort Claims Act	Yes	Yes	Yes.
Davis-Bacon Act	Yes ²	Yes ²	Yes.

¹ Unless agreed to by the tribe or tribal organization under ISDEAA, 25 U.S.C. 450j(a), and 25 CFR part 900.115.

² Does not apply when tribe performs work with its own employees.

§ 170.607 Can a tribe use its allocation of IRR Program funds for contract support costs?

Yes. Contract support costs are an eligible item out of a tribe's IRR Program allocation and need to be included in a tribe's project construction budget.

§ 170.608 Can a tribe pay contract support costs from Department of the Interior or BIA appropriations?

No. Contract support costs for IRR construction projects cannot be paid out of Department of the Interior or BIA appropriations.

CONTRACTS AND AGREEMENTS UNDER ISDEAA

§ 170.610 What IRR Program functions may a tribe assume under ISDEAA?

A tribe may assume all IRR Program functions and activities that are otherwise contractible under a self-determination contract or self-governance

agreement following the requirements in 25 CFR parts 900 or 1000.

(a) Tribes may use IRR Program project funds contained in their contracts or annual funding agreements for contractible supportive administrative functions.

(b) Appendix A to this subpart contains a list of non-contractible functions and activities that cannot be included in contracts or agreements.

§ 170.611 What special provisions apply to ISDEAA contracts and agreements?

(a) *Multi-year contracts and agreements.* The Secretary can enter into a multi-year IRR Program self-determination contract and self-governance agreement with a tribe under sections 105(c)(1)(A) and (2) of ISDEAA. The amount of such contracts or agreements is subject to the availability of appropriations.

(b) *Consortia.* Under Title I and Title IV of ISDEAA, tribes and multi-tribal organizations are eligible to assume